



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/461,887 12/15/99 DARTEY

C MCP-233

EXAMINER

HM12/1002

AUDLEY A CIAMPORCERO JR
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

WANG, S

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

10/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/461,887

Applicant(s)

DARTEY ET AL.

Examiner

Shengjun Wang

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other: _____

Art Unit: 1617

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted July 23, 2001 is acknowledged.

The prior office action is withdrawn in favor of the following action.

Claim Rejections 35 U.S.C. § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4-14, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "long chain" in claims, 1-3 and 12 is a relative term which renders the claim indefinite. The term "long chain" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The claims are indefinite as to the chain length of the alcohol.

Claim Rejections 35 U.S.C. § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1617

5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cain et al. (EP 0, 901,804, IDS) in view of Kimura (CAPLUS Abstract, 1994:321866), Hohnen Oil Co. (CAPLUS Abstract, AN 1986:18914) and Tanaka (CAPLUS Abstract, AN 1989:153130)

6. Cain et al. teaches a fat-containing product and the method of making the same. The method comprising mixing edible oil with fatty alcohol of at least 20 carbons, preferred 24-34 carbon and incorporated the mixture into food products. The amounts of the fatty alcohol is about 0.005-10% by weight. A variety of foods may be made from the fatty alcohol containing mixture, e.g., spread creams, ice creams. The employment of long chain alcohol in oil lowers the viscosity of the oil mixture and improve the applicability of the oil mixture in food process. See, page 2, lines 3-58. No particular limitation regarding the edible oil employed in the mixture. See, page 3, lines 1-9. The mixture has reduced viscosity. See particularly, the claims.

7. Cain et al. does not expressly teach the employment of the particular vegetable oil or the particular food products herein, such as non-continuous oil phase products.

8. However, Hohnen Oil Co., and Kimura teaches that employment of vegetable oil, such as soybean oil and corn oil for solubilization of fatty alcohols is known. Tanaka teaches that it is known to employ oil-fatty alcohol mixture for making oil in water emulsion (non-continuous oil phase).

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make an oil-long chain alcohol mixture wherein the oil is essentially free of medium chain triglyceride, or make the mixture into non-continuous oil phase mixture.

Art Unit: 1617

9. A person of ordinary skill in the art would have been motivated to make an oil-long chain alcohol mixture wherein the oil is essentially free of medium chain triglyceride, or make the mixture into non-continuous oil phase mixture because the long chain alcohol is known to reduce the viscosity of oils, including those without medium chain glyceride. Using the alcohol-oil mixture taught by Cain to make a particular non-continuous oil phase food products is considered within the skill of artisan, because it is known in the art to employ oil-fatty alcohol mixture for making oil in water emulsion. Further, optimization of the mixing procedure herein, e.g., the temperature, is considered within the skill of artisan. Regarding the limitation of free of an emulsifier or surfactant, it is noted that Cain's claimed subject matter does not require any emulsifier or surfactant. Regarding the particular viscosity in the claimed invention, it is noted that Cain teaches the employment of long chain alcohol herein for reducing the viscosity of edible oil products. See the claims. The difference claimed herein is in degree, not in kind. Such variation is obvious and is within the skill of artisan, absent evidence illustrating the criticality of the difference.

Response to The Arguments

Applicants' amendments and arguments submitted July 23, 2001 have been fully considered, but are not persuasive for reasons discussed below.

10. Regarding the remarks about "long chain", note the issue is not whether the phrase "long chain" stand alone or associated with other word, it is the definition of the phrase. Because of the ambiguity of the phrase "long chain", one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Specifically, the claims are indefinite as to the *chain length* of the alcohol.

Art Unit: 1617

Applicants' arguments regarding the rejection under 35 U.S.C. 103 are moot in view of the new ground rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

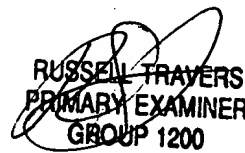
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Shengjun Wang

AU 1617

September 27, 2001



RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200